

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Basic Cable Service and Equipment Rates of TCI)	
Cablevision of Hayward, Inc., San Leandro,)	
California)	File No.
)	
Appeal of Local Rate Order)	CSB-A-0286

MEMORANDUM OPINION AND ORDER

Adopted: January 17, 2003

Released: January 23, 2003

By the Deputy Chief, Policy Division, Media Bureau::

I. INTRODUCTION

1. TCI Cablevision of Hayward, Inc. ("TCI"), the franchised cable operator serving the community of San Leandro, has appealed a local rate order adopted by the City of San Leandro, California ("San Leandro") on October 16, 1995, requiring TCI to reduce its basic service tier ("BST") rate and issue refunds because of the improper unbundling of equipment costs.¹ No opposition was filed. Based upon our review of the record, we grant TCI's appeal of San Leandro's Rate Order.

II. BACKGROUND

2. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") gave the Commission and local franchising authorities jurisdiction over the cable programming and equipment rates of cable systems that did not face effective competition, as defined by the 1992 Cable Act. Specifically, the 1992 Cable Act provided that, with respect to cable systems that are not subject to effective competition, local franchising authorities may regulate the rates for the BST and equipment pursuant to guidelines established by the Commission, and the Commission would regulate the rates for the cable programming service tier ("CPST").²

3. The 1992 Cable Act requires operators to fully "unbundle" equipment and installation costs from programming costs.³ The Commission's regulations implement Congress' directive by requiring operators to establish an "equipment basket."⁴ Section 76.923(c) of the Commission's regulations specifically provides that equipment basket costs shall include "the direct and indirect material and labor of providing, leasing, installing, repairing, and servicing customer equipment." In the order adopting this regulation, the Commission further explained it by stating that "[t]he basket will

¹ The Rate Order is identified locally as Resolutions 95-207 and 95-208.

² 47 U.S.C. § 543(a)(2). The 1996 Act, P.L. 104-104, 110 Stat. 56 (1996), repealed the Commission's regulatory authority over CPST rates effective March 31, 1999.

³ 47 U.S.C. § 543(b)(3).

⁴ 47 U.S.C. § 76.923(b).

include an allocation of all those system joint and company costs that service installation, leasing and equipment repair share with other activities, excluding general system overhead.”⁵ When completed correctly, Part III of FCC Form 393 unbundles equipment costs from programming costs.

III. STANDARD OF REVIEW

4. Rate orders issued by franchising authorities may be appealed to the Commission pursuant to Commission rules.⁶ In ruling on appeals of local rate orders, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision as long as a reasonable basis for that decision exists.⁷ The Commission will reverse a franchising authority's rate decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules. If the Commission reverses a franchising authority's decision, it will not substitute its own decision but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.

IV. DISCUSSION

5. On September 20, 1994, TCI filed its FCC Forms 393, 1200, 1205, and 1215. On October 16, 1995, San Leandro adopted a local rate order in which San Leandro rejected TCI's Forms based upon its findings that TCI's BST rate was unreasonable. San Leandro's findings were entirely based upon our order in *TCI Cablevision of Hayward, Inc.*,⁸ which involved our review of CPST rates for San Leandro and other communities. In *Cablevision*, we concluded that TCI's CPST tier rates were unreasonable because TCI did not properly complete Part III of its Form 393 by failing to report any maintenance facility cost for installations and service of customer leased equipment, and on Schedule B it did not report any costs for utilities.⁹ We further stated that TCI's Schedule A and B allocations were inconsistent because TCI stated on Schedule A that it had no maintenance facility, but indicated on Schedule B that TCI employees performed equipment installation and maintenance.¹⁰

6. TCI filed its appeal of the San Leandro local rate order on November 25, 1995. TCI argues that San Leandro's reliance on *Cablevision* is misplaced because TCI and the Commission had agreed upon a Proposed Resolution (“Resolution”) to resolve all outstanding CPST complaints against TCI, and the issue we addressed in *Cablevision* was one of the issues raised in the CPST complaints and

⁵ *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd. 5631 at 5815, ¶ 295 (1993) (footnote omitted). See also *First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164 at 1190, ¶ 47 (1993).

⁶ 47 U.S.C. § 543(b)(5)(B); 47 C.F.R. § 76.944.

⁷ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 5631, 5731-32 (1993) (“Rate Order”); *Third Order on Reconsideration*, 9 FCC Rcd 4316, 4346 (1994) (“Third Reconsideration Order”).

⁸ *In the Matter of TCI Cablevision of Hayward, Inc., Benchmark Filings to Support Cable Programming Service Prices*, DA 95-1070, 10 FCC Rcd 9835 (1995) (“Cablevision”).

⁹ Operators attempting to justify their prices for the period prior to May 15, 1994 were required to complete FCC Form 393, and after May 15, 1994 were required to complete FCC Form 1200. *Id.* at ¶ 3.

¹⁰ TCI filed a petition for reconsideration on June 15, 1995.

addressed in the Resolution.¹¹ TCI also argues that the refund requirement in San Leandro's local rate order is flawed because it ignores the fact that TCI has been undercharging for equipment-related costs.

7. In April 1996, the Commission adopted an Order based upon the Resolution, which resolved 2,000 rate complaints filed against TCI regarding CPST rates from September 1, 1993 through September 15, 1995.¹² The Order states that, with respect to the issues raised in *Cablevision*, TCI submitted additional information adequately explaining how it implemented the Commission's unbundling rules.¹³ Based upon this additional information, the Commission concluded that there was nothing improper about TCI's implementation of the unbundling rules and further stated that had the additional information previously been known, TCI's equipment computations would not have been rejected initially.¹⁴ The Commission also vacated the *Cablevision* decision.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the Appeal of Local Rate Order filed by TCI Cablevision of Hayward, Inc. on November 25, 1995 **IS GRANTED** and the local rate order of the City of San Leandro, California **IS REMANDED** for further consideration consistent with this Memorandum Opinion and Order.

9. This action is taken pursuant to authority delegated by § 0.283 of the Commission's rules.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

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Media Bureau

¹¹ *In the Matter of TCI Communications, Inc., Rate Complaints*, FCC 95-442, 10 FCC Rcd. 13,816 (1995). The Resolution was subsequently adopted on April 25, 1996. *In the Matter of TCI Communications, Inc., Final Resolution of Cable Programming Service Rate Complaints*, 11 FCC Rcd 14,696 (1996).

¹² *In the Matter of TCI Communications, Inc., Final Resolution of Cable Programming Service Rate Complaints*, 11 FCC Rcd. 14,696 (1996).

¹³ *Id.* at ¶ 11.

¹⁴ *Id.* at ¶ 12(g).

¹⁵ 47 C.F.R. § 0.283.